



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

March 10, 2023

Via ECF

The Honorable Sarah L. Cave  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, New York 10007

Re: *Monterey Bay Military Housing LLC, et al. v. Ambac Assurance Corporation, et al.*, No. 19 Civ. 9193 (PGG) (SLC) (S.D.N.Y.)

Dear Judge Cave:

I write on behalf of the U.S. Department of the Army (the “Army”) and the U.S. Department of the Air Force (the “Air Force”) to update the Court on the status of the Army and the Air Force’s responses to Ambac Assurance Corporation’s (“Ambac”) *Touhy* requests, as requested by the Court’s order dated February 27, 2023. *See* Dkt. No. 641.

**Army *Touhy* Request.** On February 10, 2023, the Army produced the archival email records of Barry Scribner to Ambac. In addition, the Army recently completed its search the archival emails of several additional custodians, which were requested on January 23, 2023. The Army’s search did not yield any responsive records. The Army is currently waiting to hear whether Ambac has any additional requests.

**Air Force *Touhy* Request.** On February 10, 2023, the Air Force disclosed a record located in response to a narrowed set of requests provided by Ambac, derived from its original *Touhy* request. Ambac has not raised any issue concerning this production.

**Army Deposition Requests.** The deposition of Ian Clark took place on January 11<sup>th</sup>. The deposition of Mark Connor, originally scheduled for January 25<sup>th</sup>, was postponed indefinitely due to what the Army understands to be a dispute between the parties over documents relevant to the deposition. That deposition has not yet been rescheduled.

With respect to Ambac’s 30(b)(6) deposition request, Ambac submitted an amended request to the Army on February 24, 2023, consisting of twenty-eight deposition topics. On March 3, 2023, Ambac provided the Army with an additional letter setting forth five bullet points, spanning half a page, explaining the relevance of its twenty-eight designated topics to this litigation. Because Ambac’s 30(b)(6) request remained overbroad,<sup>1</sup> the Army issued a *Touhy* letter for Ambac’s deposition request on March 9, 2023, denying Ambac’s deposition request but indicating a willingness to process a subsequent request by less-intrusive means, like by answering

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<sup>1</sup> For example, one topic would require the Army to prepare witnesses to speak about housing conditions at each of twelve installations over a twenty-two-year period.

written questions. The parties had a productive meet-and-confer about next steps earlier today. We understand that Ambac is currently weighing whether to submit a new request or whether to challenge the Army's denial as arbitrary and capricious under the Administrative Procedure Act. *See Houston Business Journal, Inc. v. OCC*, 86 F.2d 1208, 1212 n.4 (D.C. Cir. 1996). For its part, the Army intends to provide Ambac with some additional information to assist in its decision.

**Air Force Deposition Requests.** On February 8, 2023, Ambac informed the Air Force that it intended to serve a deposition subpoena on Kathleen Ferguson, former Principal Deputy Assistant Secretary and Acting Deputy Assistant Secretary of the Air Force for Installations. Ms. Ferguson contacted this Office on February 28, 2023, and indicated that she had received a subpoena, but that the subpoena contained no information about the nature of the testimony sought from her. On March 7, 2023, Ambac provided this Office with a letter about the information sought from Ms. Ferguson. The Air Force is weighing how to respond to Ambac's request.

In addition, on March 7, 2023, the Air Force received a 30(b)(6) deposition request from Jeffries Mortgage Finance, Inc.; Jeffries & Company, Inc.; Jeffries LLC; and Jeffries Group LLC (the "Jeffries Entities"). The Jeffries Entities' 30(b)(6) request is substantively identical to Ambac's 30(b)(6) request to the Army. The Air Force is weighing how to respond to the Jeffries Entities' request.

I thank the Court for its attention to this matter.

Respectfully submitted,

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